

### **REMARKS**

Please reconsider the application in view of the above amendments and the following remarks.

#### **In the specification:**

Applicants have amended the title in accordance to the examiner's suggestion.

#### **In the claims:**

Claims 1-40 are pending in the application. Applicants have amended claims 1, 2, 3, 4, 12, 13, 23, 24, 25, 33, and 37. Applicants have canceled claims 6-11, 19-22, 30 and 32.

As currently amended, claims 1, 12, 23, and 33 are independent claims. The remaining claims depend directly or indirectly from claims 1, 12, 23, and 33.

#### **Rejection(s) under 35 U.S.C. § 101**

Claims 1-32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Applicants have amended the claims in order with examiner's suggestion to overcome the rejection.

#### **Rejection(s) under 35 U.S.C. § 112**

Claims 2, 4, 6, 11, 13, 24, 27, 31 and 37 are rejected under 35 U.S.C. 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention.

Applicant has amended the claims to address the rejections of the examiner.

#### **Rejection(s) under 35 U.S.C. § 102**

Claims 1, 3-4, 6-8, 12, 23 25 and 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Bush, U.S. Patent No. 5,835,377.

Applicant has amended claims 1 and 12 to include the limitations of claims 6 and 7 and the step of generating a route for an alternate destination of the original order. Examiner asserts that Bush describes the determination of a location for the delivery or the initial order in the Abstract and lines 4-15; Column 6, lines 60-68, column 7, lines 1-3. These locations in Bush describe the use of alternate means and routes to get the order to the initial delivery destination. The alternative routes are to get the order to the initial destination. The Figure 4 also does not illustrate the directing of the initial order to any alternate destinations.

Although Bush does describe alternative procedures for delivering orders within a defined time period, Bush does not describe any procedures for routing an initial order to an alternate destination when the original order was filled by an alternative source. Contrary to the examiner's statement that all elements are disclosed in the cited reference, the step of "*generating an alternate delivery destination for the original customer order, the alternative destination being a destination of a received order from a second customer, the second order being substantially the same as the first order or the location from which the customer order originated*" is not, so the rejection is unsupported by the art and should be withdrawn.

**Rejection(s) under 35 U.S.C. § 103(a)**

Claims 2, 5, 9-11, 13-22, 24, 26 and 30-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bush, U.S. Patent no.: 5,835,377 as applied to claims 1, 3-4, 6-8, 12, 23, 25 and 27-29 above and further in view of Aklepi et al, U.S. Patent No.: 6,795,823. Applicants traverse the examiner's assertion.

Aklepi determines optimal routing of an article through a network of processing stations. The system and method generate an optimal route based on variable factors such as weather, traffic, and available equipment and can re-calculate said route at every stop based on updated information. The system and method permits tracking of an article regardless of whether the article has been consolidated with other articles or not.

Although both of the cited references have a focus on tracking the delivery of a product, neither reference teaches, mentions or discusses, the routing of an order from the original destination location to alternate destination, when the original order was filled by an alternate source.

To establish a prima facie case of obviousness, one must look at the claim. There needs to be a teaching of each element of the claim in the prior art. Applicant asserts that the cited references do not teach or suggest each element of the claims in claims Applicants present invention. In claim 1, neither reference singularly or in combination do not teach or suggest the step of *generating an alternate delivery destination for the original customer order, the alternative destination being a destination of a received order from a second customer, the second order being substantially the same as the first order or the location from which the customer order originated.* Therefore, Applicants submit that the examiner's assertions do not establish a prima facie case of obviousness in the present invention.

In view of the above, Applicants further submit that all of the pending claims as amended are in condition for allowance. Withdrawal of the rejections and passage to issuance is respectfully requested. Applicant believes this reply to be fully responsive to all outstanding issues and place this application in condition for allowance. If this belief is incorrect, or other issues arise, do not hesitate to contact the undersigned at the below listed telephone number.

Appl. No.: 09/931,294  
Amdt. dated December 30, 2005  
Reply to Office action of August 30, 2005

Applicants submit this response on December 30, 2005. A one-month extension petition has been filed with this response. Applicants have submitted a petition for one-month extension and payment with this response. No other fees are believed to be due. If Applicant is incorrect in this belief, please apply these charges or any credits, to Deposit Account 09-4447 (Reference Number ASU920010532US1).

Respectfully Submitted,



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